



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 18, 2013

Ms. Charlotte B. Popp
Legal Assistant, Civil Division
Comal County Criminal District Attorney's Office
150 North Seguin Avenue, Suite 307
New Braunfels, Texas 78130-5161

OR2013-22050

Dear Ms. Popp:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 509587 (Comal County File No. 13OR-114).

The Comal County Sheriff's Office (the "sheriff's office") received a request for information regarding two specified case numbers. You inform us you will redact social security numbers in accordance with section 552.147(b) of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Gov't Code § 552.101. This section encompasses information protected by section 261.201 of the Family Code, which provides in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

Fam. Code § 261.201(a), (k). Upon review, we find incident report number 13-09-4536 was used or developed in an investigation by the sheriff's office of alleged abuse of a child and, therefore, is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1)(A) (defining "abuse" for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining "child" for purposes of chapter 261). In this instance, the report at issue reflects the requestor is the parent of the child victim and is suspected of having committed the alleged abuse. Accordingly, incident report number 13-09-4536 may not be provided to the requestor pursuant to section 261.201(k). *See id.* § 261.201(k) (parental exception to section 261.201(a) inapplicable where parent alleged to have committed abuse or neglect at issue). Thus, incident report number 13-09-4536 is confidential under section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.³

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

However, we find incident report number 13-06-4178 pertains solely to a child custody investigation. Upon review, we find you have failed to demonstrate this information was used or developed in an investigation under chapter 261 of the Family Code. Therefore, incident report number 13-06-4178 may not be withheld under section 552.101 on this basis.

Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state incident report number 13-06-4178 relates to an ongoing criminal investigation. Based upon this representation, we conclude section 552.108(a)(1) is applicable, and the release of incident report number 13-06-4178 would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). We note basic information does not include driver’s license information subject to section 552.130 of the Government Code. *See* ORD 127 at 3-4; *see also* Gov’t Code § 552.130. Thus, with the exception of the basic information, you may withhold incident report number 13-06-4178 from disclosure based on section 552.108(a)(1) of the Government Code.⁴

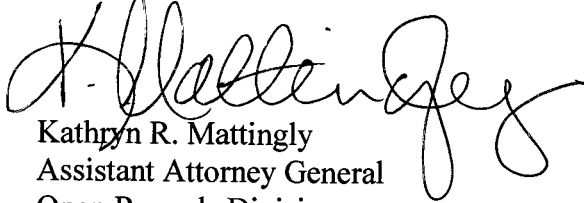
In summary, the sheriff’s office must withhold incident report number 13-09-4536 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of the basic information, which must be released, the sheriff’s office may withhold incident report number 13-06-4178 under section 552.108(a)(1) of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information, except to note basic information is generally not excepted from public disclosure under section 552.103. Open Records Decision No. 597 (1991).

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Mattingly', written over the typed name and title.

Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 509587

Enc. Submitted documents

c: Requestor
(w/o enclosures)